IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4526 OF 2004
(For condonation of delay)
IN
CRIMINAL APPLICATION NO. 809 OF 2005
(Leave to Appeal)

The State of Maharashtra Applicant
vs.
Sabir Bhikan Kha Respondent

Ms.V.R.Bhonsale, APP for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 14th February 2005

P.C.

Heard Ms.V.R.Bhonsale, the learned Additional Public Prosecutor.

2. By the judgment dated 6th January 2004, the IInd Adhoc Assistant Sessions Judge, Malegaon acquitted the accused-respondent of the offence punishable under Sections 376, 497, 504 and 506 of the Indian Penal Code. Aggrieved thereby the State has preferred criminal Appeal. The said criminal appeal has been filed on 18th October 2004. Since the appeal is barred by time, by this Criminal Application, the State prays for condonation of delay.

3. The facts stated in the Criminal Application for condonation of delay are thus:

(a) The impugned judgment was passed by the IInd Adhoc Assistant Sessions Judge on 6th January 2004.

(b) The application for certified copy of the impugned was made on 7th January 2004.

(c) The certified copy was ready on 14th January 2004 and delivered to the office of the Public Prosecutor, Malegaon on that date.

(d) On 20th March 2004, the APP, Nasik recommended to the Law and Judiciary Department that appeal be preferred against the judgment of acquittal.

(e) The Law and Judiciary Department, Mantralaya, Bombay considered the matter and decided to prefer the appeal and, accordingly, issued Government Resolution on 31st March 2004 and directed the office of the Public Prosecutor, High Court, Appellate Side, Mumbai to file an appeal.

(f) The papers were received by the office of the public Prosecutor on 1st April 2004.

(g) The appeal was filed before this Court on 18th October 2004.

4. In paragraph 3 of the application it is stated that due to heavy pressure of work on the available staff and due to non-availability of stenographers/typists, preparation and filing of appeal took considerable time.

5. We are afraid, the stereotype explanation as noticed above hardly establishes the sufficient cause within the

meaning of section 5 of Limitation Act. The fact of the matter is that on 1st April 2004 the office of the Public Prosecutor received the papers for filing the appeal against the impugned judgment. However, the appeal was only filed as late as on 18th October 2004. It does not fathom to reason that despite paucity of stenographers and typists in the office of public Prosecutor and pressure of work, it should take more than six months in typing out 14 pages of criminal appeal (now converted into criminal application) and 6 pages of Criminal application for condonation of delay.

6. To us it seems that there was total laxity on the part of the concerned persons in the office of the public Prosecutor and it lacked the urgency which the matter deserved as the papers were received before the limitation had expired.

7. In whole, we are satisfied that no case for condonation of delay is made out.

8. Criminal application for condonation of delay is rejected.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)